

SUPREME COURT-NEW YORK COUNTY.

THE NATIONAL GRAMOPHONE CORPORATION,
Plaintiff,

-against-

THE AMERICAN TALKING MACHINE CO.,
Defendant.

AFFIDAVIT IN OPPOSITION TO MOTION FOR BILL OF PARTICULARS.

FILED

- JAN 19 1900

WALDO G. MORSE,
Attorney for Plaintiff,
No. 10 Wall Street,
New York, N.Y.

SUPREME COURT-NEW YORK COUNTY.

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THE NATIONAL GRAMOPHONE CORPORATION, :
Plaintiff, :
-against- :
THE AMERICAN TALKING MACHINE COMPANY: :
Defendant. :
-----X

County of New York, SS:

WALDO G. MORSE, being duly sworn says that he is the attorney for the plaintiff in the above entitled action. That the summons and complaint in this action were served upon Albert T. Armstrong, on the 12th day of December, 1899, reference to which complaint as more fully setting up the cause of action therein contained is herewith made. That the complaint sets up a claim for libel and as showing the grounds upon which the action is brought a statement is therein incorporated wherein the libellous matter is shown and upon the facts therein set forth it was charged that the plaintiff in this action was damaged to the extent of twenty-five thousand dollars, for the reason that it had been damaged in its reputation, good name, business and credit, and furthermore by reason of the facts therein contained various customers of plaintiff declined and refused to purchase and pay for its said goods and wares, and it became and was unable to sell and dispose of the same to such customers.

That the plaintiff cannot without injury to its business disclose the name of such customers, or their places of business and residences as requested in defendants moving papers, and for this reason; that the business of the plaintiff is an extensive one covering not one particular

section but the whole country, and the good will and patronage of the customers who are now friendly with the plaintiff and its business would be endangered by the fact that such disclosures would be brought to their attention.

Deponent further says that the knowledge of such facts are not necessary to the defendant as a basis to frame his answer for the reason that the libellous statement in question was a written statement, and as to ~~its~~ ^{the} libellous nature of its contents defendant has as much knowledge as plaintiff.

Deponent further says that the records of transactions that have been cancelled and the dates thereof are kept in the various offices throughout the country where the plaintiff's business is carried on and it would be a manifest impossibility for the plaintiff to make a return of every transaction, date, person and residence involved in the demand for a bill of particulars.

Deponent further says that it would be an unfair advantage upon the trial of this action were the defendant in possession of all the facts which the plaintiff intended to prove and ^{confirm} ~~confirm~~, and this deponent charges the fact to be that the motion for an order requiring the plaintiff to furnish a bill of particulars as to all the libellous matter contained in the statements aforesaid is simply for the purpose of securing possession of facts that should properly, for the best interest of plaintiff's case, be reserved for the time ^{of the trial of the action} and for no other reason.

Wherefore this deponent prays an order of this court that this motion be denied with costs.

Sworn to before me this :
15th day of Jan'y, 1900. :

Frank Cedeno
Notary Public, 160
New York County

Waldo G. Moree